CASE SUMMARY

Complaint against the Leisure and Cultural Services Department for tolerating swimming clubs conducting improper teaching activities in public swimming pools and obstructing other swimmers

The complaint

The complainant complained against the Leisure and Cultural Services Department (LCSD) for failing to take appropriate actions to stop swimming clubs from conducting improper teaching activities in one of its public swimming pools, thus obstructing other swimmers.

Background Information

2. The complainant alleged that he had complained to LCSD in 2000 about swimming clubs occupying a public swimming pool. In reply, LCSD pointed out that according to the Public Swimming Pools Regulation (the Regulation), no person within the precincts of a swimming pool, except with the permission of the Department, should engage in commercial activities, including swimming lessons conducted by individuals. Offenders might be penalised. If LCSD staff discovered any swimming club conducting swimming lessons in a pool without permission, they would promptly advise against it. If the advice was not taken, they would order the persons concerned to leave the pool.

3. The complainant went to swim in the same pool last year and found once again that while three lanes had been hired out to a swimming club, the remaining five lanes and the whole training pool were occupied by other swimming clubs for training purpose. However, the lifeguards at the pool turned a blind eye to all these. The complainant thought that the other swimming clubs were doing injustice to the public and to the clubs which had hired the three lanes. Therefore, he lodged a complaint with this Office.

Investigation

4. Staff from this Office carried out a site inspection at the swimming pool in question as well as at another pool, and the account given by the complainant was confirmed. No notice was put on the bulletin board at the entrance of the swimming pool complex to inform swimmers that a swimming club had hired the pools/lanes. Near the entrance, office bearers of several swimming clubs were seen calling learners to assemble at the pool for their lessons. From the enrolment leaflets these clubs gave out and the swimming class schedules they put down in their respective internet web pages, it could be seen that some of these clubs had not hired pools/lanes for their swimming classes. Hence, we decided to conduct an investigation.

Information provided by LCSD

5. According to current policies, LCSD might lease out part of the 50-metre pools in its pool complexes to priority users such as the Hong Kong Amateur Swimming Association and its affiliates, the Hong Kong Life Saving Society and its affiliates, for conducting training activities or examinations. Normally, no more than four lanes of the 50-metre pool in each pool complex would be leased out for training purpose at one time, so that the public could use the remaining lanes in the pool. In addition, all facilities in the pool complexes might also be leased out to swimming clubs for training purpose during the two daily sessional breaks. On public holidays, Saturday afternoons and Sundays, except during the sessional breaks, LCSD swimming pools are open to the public only.

6. Since many organisations want to hire swimming pools/lanes for training purpose but the demand for these facilities often exceeds supply, some unselfdisciplined and irresponsible swimming clubs would, after failing to hire swimming pools/lanes, instruct learners to pay for admission as ordinary swimmers and then gather at a certain point at the pool-side for their swimming lessons. In this way, they would cause nuisance to other swimmers.

7. According to LCSD, swimming lessons involving commercial elements would be deemed as violation of the Regulation. However, in enforcing the Regulation, LCSD officers had to gather concrete evidence to prove a commercial relationship between the instructor and members of a swimming class. Otherwise, it could not take any actions. LCSD officers might question the persons involved but more than often found it difficult to adduce evidence.

Observations and Comments

8. We noted that when LCSD officers found someone occupying the swimming lanes or conducting improper teaching activities, they would take action in accordance with the following procedures:

(a) promptly advise the instructor to stop teaching;

(b) ask the persons concerned to leave the pool if the advice has fallen on deaf ears; or even

(c) prosecute the persons concerned under the Regulation for conducting swimming lessons of a commercial nature where necessary and when there is sufficient evidence.

9. Records of a public swimming pool on Hong Kong Island showed that in July last year, LCSD issued a total of 168 verbal warnings, but no one was asked to leave the pool or prosecuted. We firmly believed that some instructors would not stop the teaching activities even if they knew they had obstructed other swimmers and LCSD officers had advised them against it as they might have already received instruction fees from the learners. Unless LCSD took further actions under the Regulation to drive those who refused to comply despite repeated advice out of the

pool complex, such irregularities could hardly be rectified.

10. Those learners who were admitted into the pool complex as ordinary swimmers might have seen the notice concerning the Regulation near the entrance of the pool complex. Nevertheless, they might not understand that when they were learning to swim under the guidance of an instructor in the public lanes of a pool, they would obstruct other swimmers and violate the Regulation. They might even be driven out of the pool complex as a result.

11. As regards improper teaching activities, Section 4 of the Regulation stipulates that it is an offence to do any act that is likely to endanger, obstruct, inconvenience or annoy any person in a swimming pool. Hence, teaching activities conducted by swimming clubs in public swimming lanes may be regarded as acts that obstruct other swimmers. LCSD may well consider prosecuting those who refuse to comply with the Regulation despite repeated advice as a warning to others.

12. This Office does not agree to LCSD's view that in order to enforce the Regulation, it must have the assurance of affected swimmers to testify. As the enforcement agency, LCSD should actively and strictly enforce the Regulation when any person is seen conducting improper teaching activities. It should not wait until swimmers lodge complaints.

13. This Office considered that LCSD had not taken any vigorous action to stop the teaching activities of swimming clubs in public swimming lanes, which had obstructed other swimmers in the public swimming pools. Therefore, this complaint is **substantiated**.

Recommendations

14. This Office put forward eight recommendations. The main points were:

(a) to meet officers-in-charge of swimming clubs and their instructors and caution them that they should conduct commercial swimming lessons in hired swimming lanes only if the lessons are paid for and commercial elements are involved; instructors should let learners know if the swimming lanes have or have not been hired for conducting lessons; if lanes have not been hired, learners should also be alerted that they would cause nuisance to other swimmers and they might be ordered to leave the swimming pool as a result;

(b) to adopt a positive attitude in handling non-compliance and consider controlling the teaching activities by enforcing Sections 4 and 5 of the Regulation; and

(c) to closely monitor the activities in public swimming pools and

encourage swimming clubs to use other swimming pools and facilities which are available for hire.

Responses from LCSD

15. LCSD was of the view that to prohibit teaching activities in public swimming pools ran counter to both public interest and actual needs of the community. The Department pointed out that as long as other swimmers were not affected, teaching activities conducted by individuals or swimming clubs in public swimming pools were not against the Regulation. It maintained that in order to enforce Section 4 of the Regulation, there must be an independent third party witness because whether an act was likely to endanger, obstruct, inconvenience or annoy any person was purely a subjective view of the individual swimmer. Without an independent witness, the chance of a successful prosecution in any suspected non-compliance case would be slim. Furthermore, it was not uncommon that swimmers bumped into one another every now and then and it was often difficult to tell whether one swimmer was "obstructing others" or the swimmers were "obstructing each other". Therefore, LCSD would only mediate between the parties concerned. Broadly speaking, the word "trading" in Section 5 of the Regulation referred to commercial activities conducted in the precincts of swimming pools. Activities conducted outside the precincts of swimming pools were beyond the jurisdiction of LCSD.

16. To make sure that learners would not affect other swimmers, LCSD planned to implement new management measures in the coming swimming season. Fast and slow circular lanes would be designated in the main pools to prevent swimmers from bumping into one another. Swimming clubs would be allowed to hire training pools in leisure pool complexes for the purpose of training during the sessional breaks.

Final Remarks

17. This Office is of the view that to promote swimming in our community and enhance the swimming skills of members of the public, LCSD should provide sufficient swimming pool facilities for training purpose. Also, it has to protect the right of the public to enjoy swimming in public swimming pools. However, LCSD has been tolerating priority users, especially swimming clubs, occupying lanes and conducting group training or even commercial swimming classes which affect other swimmers.

18. Regarding the enforcement of Section 4 of the Regulation, this Office does not agree with LCSD because its staff should enforce the Regulation and testify in court if they notice any person obstructing other swimmers in public swimming pools.

19. This Office considers that paid swimming lessons apparently have a commercial element and are obviously in violation of Section 5 of the Regulation. LCSD argued that even if swimming clubs did mention in the publicity leaflets they distributed outside the swimming pools the enrolment methods and details of the

fees for the swimming classes conducted in public swimming pools, it was not sufficient proof of the clubs conducting commercial activities in the pools. This Office suggested that LCSD should seek legal advice with reference to actual cases so as to clarify the scope of application of Section 5.

20. In summary, this Office considers that LCSD has neither vigorously enforced the Regulation nor effectively stopped improper teaching activities of swimming clubs. Consequently, other swimmers were affected and the learners might bump into other swimmers now and then, resulting in grudges and inconvenience to the public.

21. After careful consideration, the Ombudsman maintains that the conclusion of the case should remain unchanged, i.e. the complaint is substantiated. The recommendations made by this Office will in the long run help LCSD strike a balance between the needs of the swimming clubs and those of the public so that the former can conduct swimming lessons and the latter can enjoy swimming in public swimming pools.

Latest Developments

22. This Office is pleased to learn that LCSD has taken positive actions to implement our recommendations to ban improper teaching activities which cause nuisance to other swimmers and would prosecute those who breach the Regulation.

23. LCSD has also set up a working party, comprising academics of two local universities, to review the policies pertaining to the management of public swimming pools and booking arrangements. The terms of reference of the working party include making recommendations to LCSD on the following matters:

(a) setting the priority of sports associations in booking swimming pools;

(b) improving allocation of lanes;

(c) closely regulating the order of activities in swimming pools; and

(d) balancing the needs of all parties.

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